

DOCKET NO: 243414US26YA

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE APPLICATION OF :  
DOREL LOAN TOMA, ET AL. : EXAMINER: NGUYEN, T.  
SERIAL NO: 10/682,196 :  
FILED: OCTOBER 10, 2003 : GROUP ART UNIT: 2813  
FOR: METHOD AND SYSTEM FOR :  
TREATING A DIELECTRIC FILM

ELECTION OF SPECIES

COMMISSIONER FOR PATENTS  
ALEXANDRIA, VIRGINIA 22313

SIR:

In response to the Election of Species Requirement dated August 10, 2007, Applicants elect, with traverse, for search purposes only, III-Specie 3, drawn to exposing dielectric film to TMCTS or OMCTS. Claims 16, 25 and 52 read on the elected specie.

The Office has required Applicants to elect for prosecution on the merits a single disclosed species from the following:

- I-Specie 1, drawn to exposing the dielectric film to CxHy and chlorine (ex. Claim 1);
- II-Specie 2, drawn to exposing the dielectric film to CxHy (ex. Claim 50);
- III-Specie 3, drawn to exposing dielectric film to TMCTS or OMCTS (ex. Claim 52);
- IV-Specie 4, drawn to exposing dielectric film to CxHy within liquid phase or supercritical phase (ex. Claim 53).

Applicants make no statement regarding the patentable distinctness of the species, but note that for restriction to be proper, there must be patentable difference between the species as claimed. MPEP § 808.01(a). The Office has not provided sufficient reasons or examples

to support a conclusion that the species are indeed patentably distinct. The Office has simply asserted:

The species are independent or distinct because claims to the different species recite the mutually exclusive characteristics of such species. In addition, these species are not obvious variants of each other based on the current record. ...

There is an examination and search burden for these patentably distinct species due to their mutually exclusive characteristics. The species require a different field of search (e.g., searching different classes/subclasses or electronic resources, or employing different search queries); and/or the prior art applicable to one species would not likely be applicable to another species; and/or the species are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph. Election of Species Requirement at page 2.

Accordingly, Applicants respectfully submit that the Election of Species Requirement is improper and should be withdrawn.

With respect to the elected specie, Applicants respectfully submit that, should the elected specie be found allowable, the Office should expand its search to the non-elected species.

Applicants submit that this application is now in condition for examination on the merits and early notification of such action is earnestly solicited.

Respectfully submitted,

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